

United Steelworkers of America and its Local Union No. 5724, AFL-CIO and Ormet Corporation and International Union, United Plant Guard Workers (UPGWA) and its Amalgamated Local No. 65,¹ Case 9-CD-399

March 1, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Ormet Corporation, herein called Employer or Ormet, alleging that United Steelworkers of America and its Local Union No. 5724, AFL-CIO, herein called Steelworkers, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by Steelworkers rather than to employees represented by International Union, United Plant Guard Workers (UPGWA) and its Amalgamated Local No. 65, herein called UPGWA.

Pursuant to notice, a hearing was held before Hearing Officer James E. Horner on October 30, 1981. The Employer, Steelworkers, and UPGWA appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer, Steelworkers, and UPGWA filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Delaware corporation, is engaged in the processing of aluminum ore at its plant in Hannibal, Ohio. The parties further stipulated that, during the 12 months preceding the hearing, a representative period, the Employer received material and goods valued in excess of \$50,000, which were shipped directly to its Hannibal, Ohio, facility from points located outside the State of Ohio. The parties also

stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Steelworkers and UPGWA are labor organizations within the meaning of Section 2(5) of the Act.

A. Background and Facts of the Dispute

There are two Board-certified unions at Ormet's Hannibal, Ohio, plant. The production and maintenance employees, who include "receiving clerks," "weigher-checkers," and "scalemen," are represented by Steelworkers. Ormet's security personnel are represented by UPGWA.

The Employer operates an aluminum reduction plant in Hannibal, Ohio. As part of its operations it employs security personnel who work on a 24-hour, 7-day-a-week schedule and are stationed at the guardhouse near the main gate. These employees, who are represented by UPGWA, are generally responsible for plant security, including controlling access to the plant by logging in all vehicles entering the facility through the main gate. Approximately 40 trucks make daily deliveries; about 30 of these trucks carry coke or pitch and each of these trucks makes 6 to 7 trips. The remaining trucks deliver miscellaneous materials used throughout the plant. Ormet also employs production and maintenance employees, including receiving clerks, weigher-checkers, and scalemen, who are represented by Steelworkers. The receiving clerks, who are located in the warehouse about 100 feet from the main gate, process the paperwork pertaining to deliveries. About 5 to 10 times a day, a guard will call a receiving clerk to "greet" certain trucks and do the necessary paperwork. Receiving clerks do not "greet" the coke and pitch trucks individually, but process the related paperwork cumulatively at the end of the day.

The weigher-checkers and scalemen operate various scales throughout the facility. The largest scale is 15 tons and does not accommodate trucks. The evidence shows that both weigher-checkers and scalemen perform general weighing tasks, including "in-process" weighing as part of management's internal controls and "out-going" weighing to determine the amounts of materials, usually aluminum, being shipped out of the plant. In addition, some outgoing shipments are sent to the adjacent Consolidated Aluminum Corporation (Conalco) plant where trucks carrying shipments of materials from Ormet are weighed by Conalco guards.

¹ The name of the Union appears as amended at the hearing.

In January 1980, the Employer, in an effort to reduce losses attributable to weight discrepancies, decided to install a 60-ton Thurman Load Cell truck scale at the plant's main entrance. The installation of the scale was begun in February 1981, and completed in April 1981. Located 70 feet away from and directly in front of the guardhouse, the scale registers weight on a large outside "score-board" and on a computer terminal inside the guardhouse. The computer performs numerous functions, including recording entry of the truck's empty and full weights and its identification number and calculating the net weight of the load. A printout provides three copies of the recorded data; one is kept by the driver, one is delivered by the driver to the receiving clerks, and one is forwarded to Ormet's accounting office.

In May 1981, following completion of the scale, Donald Grimes, a representative of Steelworkers Local No. 5724, met with Douglas Windeler, Ormet's manager of industrial relations, and claimed the operation of the truck scale for employees represented by Steelworkers, stating, *inter alia*, that the assignment was in violation of the contracting-out clause of Steelworkers collective-bargaining agreement with the Employer. Windeler testified that, in response to his explanation for assigning the work to employees represented by UPGWA and his statement that Ormet intended to go forward with the assignment, Grimes said that he "could not guarantee what might happen," but if Ormet assigned the work to UPGWA "our guys" could or would "end up on the road." Since that time, the Employer has not operated the new truck scale and has continued its practice of using the Conalco scale when needed.

B. The Work in Dispute

The disputed work involves the operation of the 60-ton Thurman Load Cell truck scale for the weighing of incoming and outgoing trucks located at the main entrance to Employer's plant in Hannibal, Ohio.

C. Contentions of the Parties

The Employer contends that the dispute is properly before the Board. It further contends that the work in dispute involves plant security and that the Board should award the disputed work to its employees represented by UPGWA on the basis of its collective-bargaining agreement with UPGWA, area and industry practice, Employer's preference, and economy and efficiency of operations. UPGWA has taken a position consistent with that of the Employer.

Steelworkers contends that there is no reasonable cause to believe that it has violated Section 8(b)(4)(D) of the Act. It further asserts that the production and maintenance employees historically have performed all weighing functions at the plant, and that the factors of the Employer's practice, relative skills, and economy and efficiency of operations favor an award of the work in dispute to employees represented by Steelworkers.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that there is no agreed-upon method for the voluntary adjustment of the dispute.

As noted above, in a conversation with Ormet's manager of industrial relations, a Steelworkers representative claimed the disputed work for production and maintenance employees and stated that if Ormet went forward with the assignment "our guys" could or would be "out on the road."² Based on the foregoing, and on the record as a whole, we find that an object of this statement was to force or require the Employer to reassign the work in dispute to employees represented by Steelworkers. Therefore, we conclude that reasonable cause exists to believe that a violation of Section 8(b)(4)(D) of the Act has occurred.

No party contends, and the record discloses no evidence showing, that there exists an agreed-upon method for the voluntary adjustment of the present dispute to which all parties are bound. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to relevant factors.³ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.⁴

² As noted above, the union representative also asserted that the assignment was in violation of the contracting-out clause of Steelworkers collective-bargaining agreement with the Employer. We note that art. XXX (entitled "Contracting-Out") of the Steelworkers contract refers to "work which could otherwise be performed by the Company with its own employees." This provision on its face is inapplicable to Ormet's assignment of work to its own security personnel.

³ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [Columbia Broadcasting System], 364 U.S. 573 (1961).

⁴ *International Association of Machinists Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

1. Certifications and collective-bargaining agreements

In 1956, Steelworkers was certified as the bargaining representative of a unit comprised of the Employer's production and maintenance employees. UPGWA was certified in 1966 as bargaining representative of Ormet's security personnel. The respective certifications preceded the installation of the truck scale and neither certification has been amended or clarified by the Board to cover the disputed work. This factor therefore is not helpful to our determination.

The Employer currently has collective-bargaining agreements with both Steelworkers and UPGWA. There is no mention of the truckscale operation in the Steelworkers contract. However, incorporated in the Employer's agreement with UPGWA is a letter of understanding, which provides that "if and when the new truck scale is installed at the Ormet plant responsibility for operation will be the duty of the Guards." This provision clearly refers to the disputed work. Accordingly, we find that the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by UPGWA.

2. Employer's preference and past practice

The Employer assigned the work to and, at the hearing and in its brief, has expressed its preference that the disputed work be performed by employees represented by UPGWA. While we do not afford controlling weight to this factor, we find that it tends to favor an award of the disputed work to employees represented by UPGWA.

The record discloses no past practice by the Employer with respect to the assignment of work identical to that in dispute herein. This factor, therefore, is not helpful to our determination.

3. Area and industry practice

UPGWA presented undisputed testimony that at each of three plants within a 10-mile radius of the Employer's plant, including two metals plants where production and maintenance employees are represented by Steelworkers, employees represented by UPGWA conduct truckscale operations. It further presented uncontradicted evidence that such practice conforms to that of numerous aluminum and other industrial plants in the State of Ohio. Additionally, UPGWA's regional director of region 3 testified without contradiction that at plants where truckscale operations are conducted by unionized employees in region 3 (comprising Ohio, Virginia, West Virginia, Maryland, North Carolina, South Carolina, and Florida) such work is performed by employees represented by

UPGWA and that the assignments of truck scale weighing work in all 50 States, Puerto Rico, and Canada are similar to those in region 3. We therefore find the factors of area and industry practice favor an award of the disputed work to employees represented by UPGWA.

4. Relative skills

The record establishes that no special skills are required to perform the work in dispute and that employees represented by either Union possess the requisite skills to perform such work. We therefore find that this factor is inconclusive and does not favor an award to employees represented by either Union.

5. Economy and efficiency of operations

The record shows that all trucks entering the facility through the main gate are required to stop at the guardhouse and register with the security personnel who are on duty 24 hours a day. With the addition of a truck scale operation, the driver would park a truck on the scale before entering the guardhouse where he would be presented with a weight ticket. He would then continue with his deliveries and repeat the weighing process upon leaving the premises. Each weighing operation, if integrated into the duties currently performed by security guards, would take no longer than a minute to complete.

In contrast, assignment of the disputed work to employees represented by Steelworkers would involve the performance of duties in addition to their regular work, including 40 to 50 daily trips, taking an estimated 10 minutes each, to the guardhouse to weigh the incoming or outgoing trucks. Furthermore, the Employer presented uncontradicted evidence that, if the disputed work were awarded to employees represented by Steelworkers, it would have to hire one or more receiving clerks to handle the extra work or spend an estimated \$50,000 to install a computer terminal inside the warehouse where the receiving clerks presently work. Based on the foregoing, we find that the factors of economy and efficiency of operations favor an award of the work in dispute to employees represented by UPGWA.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by UPGWA are entitled to perform the work in dispute. We reach this conclusion based on the facts that such assignment is consistent with the Employer's collective-bargaining agreement with

UPGWA and not inconsistent with its contract with Steelworkers; such assignment is consistent with the Employer's preference and area and industry practice; these employees possess the requisite skill to perform the work in dispute; and such assignment results in greater efficiency and economy.

In making this determination we are awarding the work in dispute to the Employer's employees who are represented by UPGWA but not to that Union or its members. Our present determination is limited to the particular dispute which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing factors and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Ormet Corporation, who are currently represented by International Union,

United Plant Guard Workers (UPGWA) and its Amalgamated Local No. 65, are entitled to perform the operation of the 60-ton Thurman Load Cell truck scale for the weighing of incoming and outgoing trucks located at the main gate of the Employer's plant in Hannibal, Ohio.

2. United Steelworkers of America and its Local Union No. 5724, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Ormet Corporation to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Steelworkers of America and its Local Union No. 5724, AFL-CIO, shall notify the Regional Director for Region 9, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.